

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

TRAVIS MICHAEL EASTER,

Petitioner,

v.

STEVE FRANKE,

Respondent.

MOSMAN, J.,

No. 2:11-cv-00906-JE

OPINION AND ORDER

On January 20, 2016, Magistrate Judge Jelderks issued his Findings and Recommendation [133], recommending that Petitioner's Motion for Hearing [105] should be DENIED, the Amended Petition for Writ of Habeas Corpus [39] should be DENIED, and a judgment should be entered dismissing this case with prejudice. Judge Jelderks also recommended that the Court issue a Certificate of Appealability as to whether Petitioner was denied his right to the effective assistance of counsel. Petitioner objected [138] and Respondent responded [139] to Petitioner's objection and objected to the issuance of Certificate of Appealability.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon careful review, I agree with Judge Jelderks's recommendation and I ADOPT the F&R [133] as my own opinion.

IT IS SO ORDERED.

DATED this 31st day of March, 2016.

/s/ Michael W. Mosman
 MICHAEL W. MOSMAN
 Chief United States District Judge